

BEFORE THE INVESTIGATIVE PANEL OF THE
FLORIDA JUDICIAL QUALIFICATIONS COMMISSION
STATE OF FLORIDA

INQUIRY CONCERNING A JUDGE NO. 02-337
RE: JUDGE ANA MARIE PANDO

CASE NO. SC04-1636

**RESPONSE OF JUDICIAL QUALIFICATIONS COMMISSION
TO COURT ORDER RE CLARIFICATION**

On August 23, 2004, the Florida Judicial Qualifications Commission (the "JQC") filed with this Court Findings & Recommendations of Discipline relating to County Judge Ana Marie Pando, based upon a Stipulation between said Respondent and the JQC. On January 3, 2005, this Court entered an Order requiring clarification of the conduct referred to in paragraph 6(d) of that Stipulation. In response, the JQC advises as follows:

INTRODUCTION

Of concern in the investigation of Judge Pando's campaign finance activities was a \$25,000 loan that she made to her campaign on August 10, 1998 (the "Campaign Loan"). On the same day that she made the Campaign Loan, she deposited a \$25,000 check from her mother's company into her personal account (the "Family Gift"). At her deposition during the investigation, taken on July 2, 2003, Judge Pando produced a letter from Eastern National Bank, dated July 1, 2003, reflecting a \$25,000 loan (the "Bank Loan") for which she applied and that the bank approved on August 13, 1998. She claimed that the Bank Loan was the source of the funds for the August 10, 1998, \$25,000 Campaign Loan, rather than the Family Gift that she deposited from her mother that same day.

RELEVANT DEPOSITION PORTIONS

Pg. 9, ¶¶5-15:

- A. But like I was explaining to you, the reason why this loan was taken, when it was taken was because during the last month of the campaign you have a lot of last-minute expenses Those expenses become very large, and that's why I took out this loan, knowing that as soon as I had my last and really biggest fundraiser, which, I don't know, but it was close to this time, that I would pay off the loan with the money that I obtained. And that's what in fact happened.

Pg. 14, ¶¶11-25/Pg. 15, ¶¶1-3

- Q. Now this same time period I'll show you a copy of the Itemized Contributions Report. And the very first itemized contribution is a loan that you made to the campaign for \$25,000?
- A. Right. But the date was wrong.
- Q. You're pointing to the date of August 10, 1998?
- A. Yeah. It was a mistake. It should have been dated August 13th. That was just an oversight.
- Q. Okay. Did you actually write a check on an account to fund the \$25,000 into the campaign, your Honor?
- A. I don't remember. Did I write a check?
The loan check I probably deposited – The [Bank] loan check I probably deposited into my personal account, and then I wrote a check to the campaign
But the [Bank Loan] check would have been made out to me and then I deposited it into my account and then made a personal loan to my campaign.

Pg. 15, ¶25/ Pg. 16, ¶¶1-15

- Q. On this check that you would have written to the campaign, where was your bank account, your checking account?
- A. Ocean Bank, I think.
- Q. And do you know if this loan –

- A. My personal account is Ocean Bank.
- Q. Do you know if the loan that is represented by Exhibit 1 [referencing the Bank Loan] was a loan in the form of a line of credit that you could write checks off of or were you just given a check by Eastern National Bank?
- A. I seem to remember that it was a check, like I stated before, that was deposited into my account and then I turned around and made a personal loan to the campaign.

Pg. 19, ¶¶16-25/Pg. 20, ¶¶1-25/Pg. 21, ¶¶1-25/Pg. 22, ¶¶1-2

- Q. I'm going to take you through the money that you got from your mother [the Family Gift] in August of 1998 and let you explain how these transactions that are represented by Exhibit 1 [referencing the Bank Loan] and on the contribution report that we just discussed fit in with the \$25,000 check that was deposited in your personal account on or about August 10 of 1998 Construction Catering Company that is your parents' business?
- A. Yes, Uh-huh.
- Q. And on August 10th of 1998 did you receive a check from Construction Catering Company for \$25,000 that you deposited into your personal account?
- A. I'm not sure what the date is; but if they have it there, that must be the date, because they're in possession of all of the checks, so, yes.
- Q. Tell us if you will, what the purpose of the \$25,000 that you received from your mother was.
- A. Okay. When I bought my home in Coral Gables – I bought that house in 1996 – my mother wasn't happy with my decision that I was going to buy that house, so I pretty much did it on my own, like I did a lot of things, like running for office in '98. But she had not helped me at all with the house and she said: If you're going to do that, you're doing it on your own. Then don't come to me for the money. And I didn't. I wanted to live in Coral Gables, so I did it. And I think that she felt badly about that. And I had met a lawyer in January of '98 and we planned on getting married in '99. And I lived in a small 2 bedroom 1 bath home in Coral Gables, and, I think – of course, she would never admit to this, but I think she felt bad that she didn't help me.

It was the summer of '96, I believe, when I bought that house, so she gave me this money. She gave me the money for the wedding and also for the down payment of a house because she felt that I needed to move to a bigger house. And that's what she did.

And what is ironic about all of this is she didn't want me to run in '98. And in many ways I think she was giving me this money in hopes that I wouldn't run. I would concentrate on just planning a wedding or doing whatever, going on a honeymoon, buying a house, and that I would not run. She didn't want me to run because I had decided to run against Ed Newman, who was a Miami Dolphins football player, and everybody had said that probably was not a good idea. But, you know, I was hardheaded and stubborn and don't listen to my mom probably when I should and I decided to run anyway.

But, I mean, that's what is ironic about all of this. Actually, that money was more given to me for me not to run than for me to run. And that is the explanation.

And I said this before and I'll say it again.

The \$25,000 reflected in the report – And I noticed that it was dated incorrect – was not that same money [as the Family Gift]. That money [the Campaign Loan] was basically proceeds from [the Bank Loan] that I had to take because that last month, like I said before, it's crazy in terms of the expenditures that you have to dish out for the different media. And that's the explanation.

ANALYSIS

The JQC believed this testimony was misleading to the extent that Judge Pando swore, under oath, that the source of the August 10, 1998, \$25,000 Campaign Loan was a loan from Eastern National Bank. However, according to Judge Pando's bank records, \$25,000 was deposited into her campaign account (the Campaign Loan) on August 10, 1998, the same day that she deposited a \$25,000 check (the Family Gift) into her personal checking account. According to the loan documents that the JQC received from Eastern National Bank, the Bank Loan was applied for and approved on August 13, 1998, in the amount of \$25,000. On August 20, 1998, \$24,812.50 was credited to a new account, which was opened for the sole purpose of receiving the Bank Loan. It appears that the money never left the account, as the Bank Loan was paid off on September 3, 1998 from the loan proceeds in the amount of \$24,812.50 and from her personal account for the remaining balance.

Therefore, Judge Pando misled the JQC by testifying that the Bank Loan was the source of the \$25,000 Campaign Loan. In view of the loan documents and Judge Pando's bank records, it appears that Judge Pando was not candid, or, at the very least, was neglectful, in recognizing her obligation to be accurate in her deposition testimony, in which she attempted to portray the Bank Loan as the source of the August 10, 1998 Campaign Loan. The Bank Loan was not funded until August 20, 1998, and the Bank Loan proceeds were never deposited into the campaign account or into her personal account at Ocean Bank.

CONCLUSION

Nevertheless, on balance, the JQC believes that the interests of justice are well served by the Stipulation and recommended discipline in light of the totality of circumstances in this matter. Specifically, the campaign violations that were the subject of the deposition questions were for an unsuccessful campaign; Judge Pando was elected to office in a subsequent campaign. In addition, Judge Pando has shown an appropriate level of contrition, the Stipulation requires that she pay to the state the inappropriate campaign contribution, and the recommended punishment in this matter is at the level of previous punishment that the JQC has recommended in similar circumstances. Therefore, the JQC believes that the recommended discipline is sufficient for the facts that are stipulated.

Respectfully submitted,

/s/ Richard C. McFarlain
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY a true and correct copy of the foregoing Response of Judicial

Qualifications Commission to Court Request for Clarification has been furnished by U.S. Mail to **Jose M. Herrera, Esquire**, 1401 Ponce de Leon Boulevard, Suite 200, Coral Gables, FL 33134, and to **The Honorable Ana Marie Pando**, County Court Judge, Dade County Courthouse, 73 W. Flagler Street, Room 507, Miami, FL 33130, on this 3rd day of February, 2005.

/s/ Brooke S. Kennerly
Executive Director